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liability of municipal corporations in the proper sense, and *quasi* corporations. In *Bucher v. Northumberland County*¹³ it was held that there is no common law obligation upon counties to repair highways or bridges within their limits. So in Pennsylvania one must look to the statutes to find the duty of a county to repair its highways or bridges.

The Act of June 26, 1895,¹⁴ and its supplements have conferred upon counties power to improve any public road or highway within their limits, and have provided that any road or highway constructed or improved under the provisions thereof should forever thereafter be a county road, the duty of keeping and maintaining the same to devolve upon the county, at its expense. It has been held that from the duty to repair such roads, imposed upon the counties by these acts there is implied a liability for damages resulting from neglect of that duty.¹⁵

The Act of March 30, 1905,¹⁶ provides: "It shall be the duty of the county commissioners of the several counties of this Commonwealth to repair all county bridges, heretofore erected or to be hereafter erected by the county, and to pay all expenses of such repairs out of the county treasury in the usual manner." Under this act the court said in *Gehring v. Lehigh County*,¹⁷ "Although counties are not by this statute expressly made liable for injuries resulting from neglect properly to maintain their bridges, yet a mandate to repair carries with it a responsibility, which, if neglected, may give rise to such a liability."

It is submitted that under these decisions the law of Pennsylvania is that once the legislature has placed upon a county the duty to keep in repair a highway, bridge or public building, then the county is liable for damages resulting from a neglect of that duty.

G. F. D.

WILLS—SOLDIERS' AND SEAMEN'S WILLS—One result of the present European War has been to emphasize the rule, which always has prevailed generally, that the wills of soldiers and sailors need not conform to the requirements of ordinary wills. The English Statute of Frauds¹ provided that notwithstanding the act, "any soldier being in actual military service, or any mariner or seaman being at sea, may dispose of his movables, wages, and personal estate as he or they might have done before the making of this

¹³ 209 Pa. 618 (1904).

¹⁴ P. L. 336.

¹⁵ *Bunting v. County of Allegheny*, 60 Pitts. 512 (Pa., 1912).

¹⁶ P. L. 81.

¹⁷ 231 Pa. 497 (1911).

¹ Stat. 29 Car. II, c. 3, Sec. 23 (1676-77).

act." This exception was preserved in the Wills Act of 1837,² and is in force in most of the states of this country. Similar provisions exist in nearly the whole of modern Continental Europe.

In general, therefore, the oral wills of soldiers and seamen are recognized as valid without subsequent reduction to writing, without any specified number of witnesses, and without being made in extremis. The reason for the exception seems to be the constant danger to which such persons are subjected, and their frequent inability to find the time or the means of making a deliberate written will.³ It should be noted, however, that the language of the Statute of Frauds and of statutes based upon it applies only to the personal property of soldiers and sailors, and not to their real estate.

The statutes for the most part use the terms "soldier being in actual military service", and "mariner being at sea", but the courts as a rule have been liberal in construing these terms.⁴ Occasionally, however, a difficult case arises. Such a problem has recently come before the Chancery Division in England, where the question was whether a certain will was made by a soldier while "in actual military service." The testator was a lieutenant in the Indian Army, and in 1895 took part in certain frontier operations in Waziristan. The government distributed the war medals on March 13, 1895, and for the purpose of the distribution the Waziristan operations were regarded as having ended on that date. However, certain troops were left behind in the Tochi Valley as an escort to the delimitation party which fixed the frontier limits. The testator belonged to this escort, which was styled the "Tochi Delimitation Escort"; and while so engaged, was mortally wounded by a fanatic on May 14, 1895. Prior to his death he made a soldier's will, according to the provisions of the English Wills Act.⁵ It was contended that he was not in actual military service within the meaning of the Wills Act at the time the will was made, since peace was declared some months previously, and the delimitation of the frontier was merely one of the necessary duties connected with the terms of peace. The decision was, however, that the will was made while the testator was "in actual military service".⁶

The privilege granted the wills of soldiers is derived from the Roman law, and the phrase "being in actual military service" is

² Stat. 1 Vict. c. 26, Sec. 11 (1837).

³ Hubbard v. Hubbard, 12 Barb. 148 (N. Y. 1851)

⁴ The term "soldier" as thus applied includes all ranks, officers and privates, regulars and volunteers, provided they are "in actual military service." Spratt's Goods (1897), p. 28 (Eng., 1896); Leathers v. Greenacre, 53 Maine 561 (1866). Likewise "seaman" or "mariner" includes all persons engaged on shipboard, whether in the naval or merchant service, for the purposes of the voyage—engineers, firemen, pursers, cooks, stewards, surgeons and chaplains. *Ex parte* Thompson, 4 Bradf. 154 (N. Y., 1856).

⁵ *Supra*, note 2.

⁶ *Re* Limond, 113 L. T. 815 (Eng., 1915).

generally regarded as the equivalent of the civil law term in *expeditione*.⁷ The term "expedition", however, is not to be confined to that movement of the troops which immediately precedes the actual conflict and shock of battle;⁸ a soldier is regarded as in actual military service while he is engaged in the active duties of the field, whether it be on the march, in the temporary camps, the battle, siege, or bivouac.⁹ Thus the nuncupative will of a soldier on his way from one regiment to another, both of which are in the field,¹⁰ of an officer with his regiment which is about to start on a military expedition,¹¹ or of a soldier ordered to the hospital when on the march to meet the enemy,¹² is valid. But a soldier is not in service when quartered with his regiment in barracks,¹³ or when home on a furlough,¹⁴ or while on a tour of inspection of troops not engaged in warfare, under his command.¹⁵

The principal case, *Re Limond*,¹⁶ seems to present an extension of the rule as to soldier's wills. The war had ceased, and the shooting of the testator by a fanatic appears to have been an act which did not result directly from the previous hostilities, but which might have occurred in India during any time of supposedly perfect peace. The court, however, proceeded upon the ground that the expedition had not yet been completed.

In the case of mariners, the question arises as to when a seaman is "at sea". Here, as in the case of soldiers, the tendency of the courts is toward a liberal interpretation.¹⁷

⁷ *Drummond v. Parish*, 3 Curt. 522 (Eng., 1843).

⁸ *Leathers v. Greenacre*, 53 Me. 561 (1866). In this case it is said, "To limit the soldier's privilege to those excursions from camps or quarters in the enemy's country which are designed to bring on an immediate engagement, would be to defeat it for the most part, except as to mere nuncupations, the proof of which, resting in the breasts of those who are similarly exposed, may never be made available to the soldier's friends."

⁹ *Re Smith*, 6 Phila. 104 (Pa. 1865). In *Van Deuzer v. Gordon*, 39 Vt. 111 (1866), the language is broader: "The term service . . . is the exercise of military functions in the enemy's country in the time of war, or the exercise of military functions in the soldier's own state or country in case of insurrection or invasion."

¹⁰ *Herbert v. Herbert*, Deane & S. 10 (Eng., 1855).

¹¹ *Thorne's Goods*, 11 Jur. N. S. 569 (Eng., 1865).

¹² *Gould v. Safford*, 39 Vt. 498 (1866).

¹³ *White v. Repton*, 3 Curt. 818 (Eng., 1844).

¹⁴ *Re Smith*, *supra*, note 9.

¹⁵ *Hill's Goods*, 1 Rob. 276 (Eng., 1845).

¹⁶ *Supra*, note 6.

¹⁷ The mariner may exercise his right of nuncupation while the vessel is on a voyage, but is lying at anchor in an arm of the sea, *Hubbard v. Hubbard*, *supra*, note 3; or while in the tidewaters of a harbor. *Ex parte Thompson*, 4 Bradf. 154 (N. Y., 1856). A sailor attached to a vessel thus circumstanced is "at sea" within the Wills Act, though he be temporarily ashore on leave. *Goods of Lay*, 2 Curt. 375 (Eng., 1840).

It is usually said that the general danger attaching to actual military service and to life at sea is sufficient to warrant the making of a nuncupative will, and that the soldier or sailor need not be *in extremis* or in fear of immediate death when making an oral will.¹⁸ This point was not discussed in the principal case, but it appeared there that the testator was actually dying of a mortal wound when he made his will.

E. E.

¹⁸ *Re O'Connor*, 121 N. Y. S. 903 (1909). See also 1 Schouler, Wills, Sec. 367, 370 (ed. 1915); 1 Underhill, Wills, Sec. 176 (ed. 1900).